



# **North Dakota Farm Credit Council**

*AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota*

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**Testimony of Dana Bohn  
North Dakota Farm Credit Council Executive Director  
HB 1172  
January 21, 2021**

Chairman Johnson and members of the House Ag Committee, my name is Dana Bohn and on behalf of the North Dakota Farm Credit Council (NDFCC), I'd like to express our opposition to HB 1172. We believe this bill puts Farm Credit Services at a significant disadvantage to other lenders and deters other lenders from wanting to participate in mediation. In addition, it changes the mediation process Farm Credit Services follows, which we believe works well and has worked well since the inception of the North Dakota Mediation Service (formerly the North Dakota Agricultural Mediation Service) in 1984.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit cooperatives provide about \$14.6 billion in credit in addition to providing financial services to approximately 26,000 customers.

## **NDFCC Supports Existing Mediation Service Program**

The North Dakota Mediation Service (Mediation Service), administered by the North Dakota Department of Agriculture, is available to borrowers who have defaulted on loan terms or repayment with Farm Credit or other lenders. While Farm Credit associations provide distressed borrowers with many regulatory rights related to loan and collateral actions, the state's Mediation Service is a valuable tool that may keep farmers and ranchers from facing court action or foreclosure in the event of a distressed loan. Although mediation services have not been used extensively since the 1980s, the use increases when agriculture profitability is challenged. Mediation is an important tool to ensure the economic viability of North Dakota's farmers and ranchers during times of significant financial stress.

Although mediation is 100 percent voluntary in North Dakota, if a borrower wants to go through mediation, federal law requires Farm Credit Services to participate in good faith.

When a Farm Credit Services institution determines a borrower is distressed and may be foreclosed upon, Farm Credit Services must provide that borrower with a packet that gives them 45 days to apply to restructure their loan prior to our lending institution commencing any legal action.

The packet includes a notification that the Department of Agriculture has a Mediation Service in which they can participate, if they so desire. As I mentioned, the federal regulation that governs Farm Credit Services on this provision says if the borrower initiates mediation, then the Farm Credit Services institution must participate.

To summarize, all our borrowers are notified of the option to mediate prior to our commencing civil action. We also typically send a courtesy copy of what we call the “mediation letter” to the Department of Agriculture’s Mediation Service. This gives the staff at the Mediation Service an opportunity to contact the borrower to see if they have any desire to mediate the matter. In addition, it is not uncommon for a loan officer to contact the Department of Agriculture and encourage the staff to contact the borrower and encourage participation.

**Although the existing system works well, HB 1172 has several negative consequences for Farm Credit Services including:**

**1. Discouraging participation in Mediation Service**

Traditional banks and credit unions are not required to participate in mediation like Farm Credit Services. Mediation has been positive for Farm Credit associations, and we believe it would be positive for others. As drafted, the provision only applies to customers in mediation. If that is the case, why would a lender want to agree to mediate? If you, a lender, are in mediation then you cannot proceed with legal action. If you do agree to mediate, you tie the hands of the mediation participants and limit capability to engage in legal action. To avoid being subject to the 14-day notice period, the lender could just NOT agree to mediate. If you are not already in mediation, you are not subject to anything in this bill.

**2. Fourteen-day notice period**

As drafted, the notice requirements may obligate a lender to send another notice on a previously mediated debt. We are unclear on why we need to provide the administrator of the North Dakota Mediation Service notice of intent to commence legal action even after mediation and what that notice would entail. In addition, we are not sure our customers want the Department of Agriculture to know their business situation unless they are in mediation. This bill would force us to inform Mediation Service every time we deem a borrower distressed and likely to be foreclosed. Currently, we can respect a borrower’s wishes if they do not want mediation.

**3. “Good Faith” provision**

The Farm Credit Administration regulations governing Farm Credit Services mediation participation already requires “good faith” cooperation from Farm Credit Services institutions on request for information during mediation. These federal regulations require us to participate if mediation is initiated by the borrower and to do so in good faith. However, we are concerned about the definition of “good-faith effort to resolve the dispute” on the state level. It is unclear if it may be considered a “bad-faith” effort if we do not agree on a solution.

Therefore, we would request that the statutory language mimic Farm Credit Services' existing federal regulatory language regarding "good faith."

#### 4. Self-help repossession

There may be times when the lender must act swiftly to seize collateral to enforce and protect the loan and security. For example, cattle not being fed or collateral starting to disappear. The bill is unclear if lenders could be ordered to return the collateral to a borrower because it did not seek mediation 14 days prior to seizing its collateral.

#### 5. Registered mail

United States Postal Service (USPS) defines Registered Mail as such: [What is Registered Mail®? \(usps.com\)](https://www.usps.com/learn/what-is-registered-mail). Of particular note is this: "Registered Mail is kept highly secured and is processed manually, which naturally slows the speed at which it travels. Registered Mail is not recommended if speed of delivery is important." Title 6 of the Century Code does not include a definition of "Registered Mail," thus the USPS Registered Mail is presumed (which is what the plain language says). Usually, *Certified Mail* is used to prove service of opposing party, not a neutral third party, like the state Department of Agriculture.

Thank you for the opportunity to express our support for North Dakota's Mediation Service. NDFCC wants to make sure it is well positioned to assist the state's farmers and ranchers should another credit crisis impact the state. We look forward to working with you to ensure those facing credit problems are provided the best resources possible.

NDFCC is opposed to HB 1172 because it creates a significant competitive disadvantage for us, and we already participate in mediation and feel there is an effective process in place. Therefore, we would ask for Farm Credit Services to be explicitly excluded from the requirements in this bill. Please see the attached amendment to exclude Farm Credit institutions from this provision.

In addition, Farm Credit Services does not see a need for creditors to be included in this bill, especially since it will discourage other creditors/lenders from participating in ag mediation, which we have found to be very beneficial. Therefore, we would also ask you to give HB 1172 a Do Not Pass recommendation.

Independently owned and operated associations serving North Dakota.

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#### **6-09.10-04. Request for assistance - Negotiation - Mediation.**

A farmer, creditor, person dealing with a farmer, person eligible for mediation with an agency of the United States department of agriculture, a landowner, or an owner, lessee, or lessor of mineral interests may request assistance from the North Dakota mediation service. Upon receipt of the request, and upon consent of all parties to mediation, the administrator of the North Dakota mediation service may assign a negotiator or mediator to assist the parties in reaching a voluntary settlement. A party to negotiation or mediation under this section may not commence a civil action to resolve the dispute unless the party made a good-faith effort to resolve the dispute through negotiation or mediation and the party provided the administrator notice by registered mail at least fourteen days before commencing the action. Farm credit institutions organized under the laws of the United States are exempted from the notice requirement of this section.